

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

OJALA PROPERTIES, LLC,	)	
	)	CASE NO. 1:13CV1226
Plaintiff,	)	
	)	
v.	)	JUDGE BENITA Y. PEARSON
	)	
CLEAR CHANNEL OUTDOOR, INC.,	)	
	)	<b><u>PRELIMINARY INJUNCTION</u></b>
Defendant.	)	[Resolving <a href="#">ECF No. 19</a> ]

The within matter came on for hearing upon Plaintiff's Motion for Preliminary Injunction ([ECF No. 19](#)).

After notice to the parties, the Court held a hearing on the motion. The Court has been advised, having reviewed the record, the parties' briefs and the applicable law. The Court has also considered the testimony of Joe Recktenwald, Michael A. Mazzocco, Maria Keckan, Wael Ayyad, Neil McCormick, Scott Rowland, John Weidner, and Frank Thomas Voss, Jr., and the oral arguments of counsel. The parties have presented many issues. Only certain of them, however, concern Plaintiff's Motion for Preliminary Injunction ([ECF No. 19](#)).

**I. Background**

On May 1, 2013, Plaintiff Ojala Properties, LLC, an Ohio limited liability company with its principal place of business located in Cleveland, Ohio, filed a Complaint ([ECF No. 1-1 at PageID #: 7-37](#)) in the Cuyahoga County, Ohio, Court of Common Pleas, being Case No. CV-13-806312. Clear Channel Outdoor, Inc. was named as the defendant in this action alleging Forcible

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Entry; Detainer (Count One); Breach of Rental Agreement (Count Two); and Nuisance/Trespass (Count Three). Specifically, the Complaint ([ECF No. 1-1 at PageID #: 7-37](#)) seeks injunctive and equitable relief, including termination of the parties' Agreement of Perpetual Lease ("the Lease") (Defendant's Exhibit A<sup>1</sup>) and a forfeiture and removal of Defendant's commercial advertising structures (the "billboards") from Plaintiff's 1616 West 25th Street Property (the "Property").<sup>2</sup> [ECF No. 1-1 at ¶¶ 21-23](#).

Defendant Clear Channel Outdoor, Inc., a Delaware Corporation with its principal place of business in New York, timely removed this case to this Court on June 3, 2013, on the basis of diversity of citizenship jurisdiction. Notice of Removal ([ECF No. 1 at PageID #: 2](#)).

The City of Cleveland ("the City") Department of Building & Housing issued the parties a citation on April 23, 2013. Plaintiff's Exhibit A; Defendant's Exhibit B. The citation states in pertinent part:

main supports have rusted through and needs repaired or replaced, billboard is out of level, missing 2x6 ribbons, also fiber glass panels need to be replaced, engineers report needs to be submitted before permit is issued for repairs, second billboard has some missing trim that needs to be repaired

Plaintiff's Exhibit A at 2; Defendant's Exhibit B at CCO0011.

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<sup>1</sup> The Exhibits identified in this Order refer to those physically submitted to the Court by the parties prior to the hearing for this matter.

<sup>2</sup> Defendant owns two advertising structures on the Property. The first structure ("Structure One") has two sides - one side holds a 14 x 48 bulletin face and the other side holds two 12 x 24 poster panels. The second structure ("Structure Two") holds a 12 x 24 poster panel. A diagram depicting the locations of these structures is attached as Exhibit B to the Lease. *See* Defendant's Exhibit A at CCO0009.

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At the time of an inspection on July 5, 2013, the City indicated “this structure does require repair and the current condition may pose public safety concerns but it does not rise to the level of a serious hazard.” Defendant’s Exhibit G. On July 29, 2013, the City’s Department of Building & Housing approved Defendant’s repair plan (Defendant’s Exhibit K) and the next day issued the Building Permit (Plaintiff’s Exhibit G; Defendant’s Exhibit L) necessary for Defendant to repair the cited aboveground problems with the billboards.

On July 31, 2013, Plaintiff filed an appeal of the plan approval with the City’s Board of Building Standards and Appeals (“BBS”). The next day, Plaintiff filed another appeal with the City’s Board of Zoning Appeals (“BZA”). According to Plaintiff, an administrative stay is in effect while the BBS and the BZA decide if Defendant’s repair plans are safe and legal because the Plan Approval and the Building Permit are under appeal. See [ECF No. 18 at PageID #: 197](#); [ECF No. 20 at PageID #: 208, 216](#). Plaintiff cites [Cleveland City Ordinance §3103.20\(e\)\(3\)](#), which provides that “[a]n appeal shall stay all proceedings in furtherance of the action appealed from . . . .” Maria Keckan, one of the two principals of Plaintiff, testified that hearings are currently pending on both of the appeals. A hearing before the BZA is scheduled for September 3, 2013, and a hearing before the BBS is set for September 11, 2013.

## **II. Analysis**

### **A. Preliminary Injunction Standard**

Four factors are considered in determining whether a temporary restraining order is appropriate: (1) the likelihood of the plaintiff’s success on the merits; (2) whether the injunction will save the plaintiff from irreparable injury; (3) whether the injunction would harm others; and

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(4) whether the public interest would be served by the injunction. *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985). The test is a flexible one and the factors are not prerequisites to be met, but must be balanced. *Id.* at 1229. There is no “rigid and comprehensive test for determining the appropriateness of preliminary injunctive relief.” *Tate v. Frey*, 735 F.2d 986, 990 (6th Cir. 1984). In balancing the four considerations applicable to preliminary injunction decisions, the Court holds that equitable relief is appropriate at this time.

## **B. Application**

### **1. Likelihood of Success on the Merits**

The billboards are a blight. They are aesthetically unappealing and in poor condition. *See* Plaintiff’s Exhibit B at 3. In fact, the testimony of Scott Rowland, the Real Estate Manager of Defendant, discloses that in April, 2013, Defendant removed a couple of the sign faces or panels from Structure One. Thus, it appears that Defendant intentionally made the appearance worse by removing the panels in order to prevent the billboard that was leaning from falling over.

The extent of the dilapidation is unclear. For obvious reasons, the City has cited both Plaintiff, as the landowner, and Defendant, as the owner of the billboards. The City demands that certain aboveground repairs be made by August 29, 2013. Plaintiff is concerned, however, that the repairs required at this time by the City are less than those needed to make Structure One safe and because, among other things, the ordered repairs do not address the foundation or belowground condition of the structure.

It is undisputed that Plaintiff’s claims flow from the premise that the Lease (Defendant’s Exhibit A) is invalid, unenforceable, has been abandoned, or, by virtue of waste, it ceases to have

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any legal effect. The Court, however, is not certain that Plaintiff is likely to succeed on the merits because disputed issues of fact surround the issue of whether the dilapidated billboards in question are a violation of the Lease (Defendant's Exhibit A). Even if the Court is not certain that a plaintiff is likely to succeed on the merits, a preliminary injunction is still appropriate where the plaintiff shows "serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant" or if "the merits present a sufficiently serious question to justify further investigation." [\*In re DeLorean Motor Co.\*, 755 F.2d at 1229-30](#) (quoting [\*Friendship Materials, Inc. v. Michigan Brick, Inc.\*, 679 F.2d 100, 105 \(6th Cir. 1982\)](#))).

## **2. Irreparable Injury**

The Court finds that Plaintiff has established a likelihood of irreparable harm if Defendant is not enjoined from entering the Property to perform repairs to the billboards. In considering the testimony of Joe Recktenwald, a geotechnical engineer, the Court finds that without the issuance of a preliminary injunction, Plaintiff may lose the ability to have Defendant make additional substantive repairs to Structure One and its foundation, thereby suffering irreparable harm. Defense counsel admitted during the hearing that the presently planned repairs "may not be perfect and indeed, ultimately . . . proper channels may determine that more can be done, that other things can be done. That may happen someday."

## **3. Substantial Harm to Others**

It appears that the only entity that stands to suffer an adverse effect from the injunction is Defendant. The Building Permit (Plaintiff's Exhibit G; Defendant's Exhibit L) issued by the City

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allows Defendant to repair the cited aboveground problems only. Markings for the underground gas line can be observed in Plaintiff's Exhibit B at 6 and Defendant's Exhibit R, which are entwined with Structure One's foundations. Plaintiff's geotechnical engineer testified that the rear supports of that billboard are being pulled from the ground, and that pulling on the rear foundations in the vicinity of the gas line is "basically is a recipe for disaster." His report states that "if the sign continues to move a catastrophic event is inevitable." Exhibit B at 1. Even with the injunction in place, Defendant can appear and argue the soundness of its proposed repairs before the BZA and the BBS. Therefore, the Court finds that the harm to Defendant does not warrant denying the injunction.

#### **4. Public Interest**

The Court finds the final factor to be considered—the degree to which the public interest would be served by granting an injunction against the repairs—weighs in favor of the requested injunction. The Court agrees with Defendant that the public has an interest in being able to rely on the operation of the City's Department of Building & Housing's systems, processes, and procedures. Therefore, it will allow the hearings scheduled next month before the BZA and the BBS to go forward before the repairs to the cited aboveground problems are completed.

### **III. Conclusion**

The Court finds that Plaintiff has established by clear and convincing evidence its entitlement to injunctive relief. Accordingly, Plaintiff's Motion for Preliminary Injunction ([ECF No. 19](#)) is granted.

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1. Defendant Clear Channel Outdoor, Inc., and all of its officers, agents, servants, employees, successors, representatives, assigns, attorneys, and others in active concert or participation with them, are preliminarily enjoined and restrained, collectively and individually, from entering Plaintiff's 1616 West 25th Street Property to perform the repairs to the cited aboveground problems with Structure One until further order of the Court.

2. This Order shall become effective and enforceable on the date of its entry by the Clerk.

3. Based on the facts presented, Plaintiff Ojala Properties, LLC shall give a bond in the amount of Seventy-five Thousand Dollars (\$75,000) as security. [Fed. R. Civ. P. 65\(c\)](#).

IT IS SO ORDERED.

August 23, 2013  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge